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SPECIFIC GROUPS AND INDIVIDUALS
MIGRANT WORKERS

Note verbale dated 14 March 2001 from the Permanent Mission of Canada to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights

The Permanent Mission of Canada to the Office of the United Nations at Geneva presents its compliments to the Secretary-General of the United Nations (Office of the High Commissioner for Human Rights) and has the honour to refer to the report of the Special Rapporteur on the human rights of migrants, Ms. Gabriella Rodriguez Pizarro, on her visit to Canada in September 2000 (E/CN.4/2001/83/Add.1).

The Permanent Mission of Canada has the honour to forward the attached comments* and requests that they be circulated as an official document of the Commission on Human Rights.

* Reproduced as received, in English and French only.

Annex

Report on the visit to Canada of Ms. Rodriguez,
United Nations Special Rapporteur on the Human Rights of Migrants

The Government of Canada would like to thank Ms. Gabriela Rodriguez Pizarro, United Nations Special Rapporteur on the Human Rights of Migrants, for her visit to Canada from September 17 to 30, 2000. Canada was the first country to invite the Rapporteur and urges other countries to do so. Such cooperation will assist her in fulfilling her three-year mandate: "to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation."[1]

Canada notes with satisfaction that the Rapporteur supports Canada's efforts in dealing with trafficking of persons. Since the Rapporteur's visit, Canada has signed the *United Nations Convention against Transnational Organized Crime* (TOC) and its two supplementary protocols. In *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,* 'trafficking in persons' is defined as "recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of the person having control over another person, for the purposes of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs"[2]. In *The Protocol Against the Smuggling of Migrants by Land, Sea and Air,* the definition of 'smuggling of migrants' is "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or a permanent resident"[3]. In addition to the signing of the TOC, Canada would like to point out that its *Immigration and Refugee Protection Bill*, which was tabled in Parliament on February 21, 2001 will improve the government's ability to combat the smuggling of migrants and trafficking of persons. The new legislation reintroduces severe penalties, e.g. fines of up to CAN$1million and life in prison for people smugglers and traffickers. It will also clarify the grounds for detention to take into account the fact of large scale smuggling.

A significant part of the Special Rapporteur's report is based on individual interviews with migrants (paragraphs 48 to 64). The Canadian government agreed with and respected the

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[1] Text of the United Nations Resolution (1999/44) creating the position of Special Rapporteur on the Human Rights of Migrants

[2] Text of the *United Nations Convention against Transnational Organized Crime (TOC) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*

[3] Text of the *TOC Protocol Against the Smuggling of Migrants by Land, Sea and Air.*

Special Rapporteur's request that no Canadian government officials be present when she interviewed individual migrants. The report provides the first opportunity for Canadian officials to be informed of what individual migrants said. Canada wishes to assure the Rapporteur that it will investigate the situations described in the report and take appropriate action.

We note the Rapporteur's concerns regarding the measures that Canada took during the summer of 1999 for the purpose of, according to paragraph 49 of the report, controlling its borders and strengthening the refugee admission process. The exceptional measures taken by Canada in the summer of 1999 were part of an effort to combat illegal immigration and, in particular, smuggling of migrants. These measures were taken following the arrival of 600 persons in various ships on the west coast of Canada. Most of those who arrived did subsequently apply for refugee status in Canada. The report correctly indicates that the Minister of Citizenship and Immigration offered all asylum seekers a full hearing of their case. It is important to note that those who arrived by the first boat were allowed to come into Canada, released on conditions to report, in order to pursue their claims to refugee status and that the vast majority failed to report and could not be located. It is only after this experience that detention measures were implemented for subsequent marine arrivals, and then only upon consideration of the individual circumstances of each person. Therefore, the decision to detain these asylum-seekers, before the hearing of their case, was taken in the face of strong evidence that the people would not likely appear for their refugee hearings, as well as their inability to establish their identity. All legal safeguards were in place to protect their human rights. Canada is convinced that these actions, in these particular circumstances, were consistent with the provisions for exceptional detention of asylum seekers as set out in the UNHCR's Guidelines on applicable Criteria and Standards relating to the Detention of Asylum-Seekers.

Canada's guidelines for immigration detention stipulate that the detention of asylum seekers is an exceptional step. The *Immigration Act* allows for detention only if there are reasonable grounds to believe an individual (a) poses a danger to the public; (b) is unlikely to appear for a proceeding or removal, or; (c) is unable to establish identification. While a large proportion of people seeking asylum in Canada do not have documentation or identification, they are not detained. It is important to note that the Canadian government cannot detain anybody without a legal oversight: the Department of Citizenship and Immigration is required to bring every person for which they seek continued detention before an adjudicator, and establish to the satisfaction of the adjudicator that sufficient reasons continue to exist that justify the detention of the person concerned. Such a review must take place after 48 hours of the initial detention and, should the person not be released, with further reviews scheduled after 7 days and each subsequent 30-day period. The decisions, made by an independent tribunal, may be appealed to the Courts. No exception to these provisions was made for the people who arrived by ship in 1999.

Under the new *Immigration and Refugee Protection Act*, the detention process will be more effective and transparent. Criteria will be established through Regulations, to ensure that the appropriate factors are considered when detention decisions are taken. The Immigration and Refugee Board (IRB) will give priority to hearings for those being held in detention. This should prevent refugee claimants from remaining in detention for long periods of time. In cases

of unprotected minors arriving as part of a criminally organized smuggling or trafficking operation, the new legislation stipulates that detention will be truly a last resort and Canada will make every effort to arrange with provincial services to protect these children effectively. The new *Immigration and Refugee Protection Act* will also provide for a streamlined and more effective refugee determination process.

Canada welcomes the recommendations made by the Rapporteur. In particular, the Canadian government is committed to continuing its work with civil society and with the academic community on immigration policy. Canada intends to remain an active member of the Puebla Process[4] and will "continue with and further develop this type of forum", as suggested by the Special Rapporteur.

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[4] The Regional Consultation Group on Migration (Puebla Process) is an intergovernmental process for discussion of the full range of international migration issues among Canada, the U. S. A., Mexico, Guatemala, Honduras, Belize, El Salvador, Nicaragua, Costa Rica, Panama and the Dominican Republic.